

84-122

Central Intelligence Agency



Washington, D.C. 20505

84-0602

The Honorable George Bush
President of the Senate
Washington, D.C. 20510

Dear Mr. President:

Submitted herewith, pursuant to the provisions of 5 U.S.C. 552(d), is the report of the Central Intelligence Agency concerning its administration of the Freedom of Information Act (FOIA) during calendar year 1983.

During 1983, 2,466 requests for information were logged and put into processing by the Agency, of which 1,266 were handled under the Freedom of Information Act. Several hundred additional request letters were received during the year but not formally processed pending receipt of additional information from the requesters. These incomplete requests were, with but one or two exceptions, requests for access to personal records, which, under the Agency's regulations, are usually processed under the provisions of the Privacy Act of 1974 (5 U.S.C. 522a) rather than the Freedom of Information Act. Production/workload statistics for CY 1983 are enclosed at Tab A.

During CY 1983 the number of requests for information increased by 188 over 1982. Despite the heavy demand to focus our resources on world intelligence problems, we were still able to devote the equivalent of [] full-time employees to the effort. The dollar cost for personnel alone to sustain this effort amounted to over \$3.75 million. Of this total, \$2.8 million was devoted to FOIA. We have not factored in the cost of space and equipment needed to support our FOIA/PA activities. This cost continues to increase as we strive to improve our efficiency in processing these requests. For example, during the past year, more efficient word processors were purchased to increase the production and timeliness of our responses to requesters. We have also designed some enhancements to our computer tracking system to help us monitor requests more effectively. Despite our efforts, the backlog, which was on the decline early in the year, climbed to 407 above the year-end figure for 1982--a 15 percent increase. We attribute this mainly to a heavy volume of requests received during the latter half of the year, the complexity of those

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The Honorable Thomas P. O'Neill
Speaker of the House of Representatives
Washington, D.C. 20515

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During 1983, 2,466 requests for information were logged and put into processing by the Agency, of which 1,266 were handled under the Freedom of Information Act. Several hundred additional request letters were received during the year but not formally processed pending receipt of additional information from the requesters. These incomplete requests were, with but one or two exceptions, requests for access to personal records, which, under the Agency's regulations, are usually processed under the provisions of the Privacy Act of 1974 (5 U.S.C. 522a) rather than the Freedom of Information Act. Production/workload statistics for CY 1983 are enclosed at Tab A.

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requests, and an increased emphasis on training of personnel responsible for FOIA processing. We did, however, see a continued reduction in cases awaiting processing as administrative appeals. The appeal backlog was reduced by 48 cases; at the end of 1983 it stood at 115 open appeals.

The principal difficulty the Act poses for the Agency is its effect on our intelligence collection effort, as Director Casey and other senior officials have stated on numerous occasions. To operate effectively as a foreign intelligence gathering organization, we must be able to enlist the cooperation of individuals and foreign governments. Many potential sources have refused this cooperation considering the risk of inadvertent disclosure too great, in part because our records--even the most sensitive ones--are subject to the provisions of FOIA. We can and do assure our sources that the Act provides exemptions to protect from disclosure both classified material and information relating to intelligence sources and methods and that we employ multiple layers of review to further ensure protection. Some, however, remain unconvinced. Many are aware that there is the risk of error, and, despite the elaborate precautions, mistakes have been made resulting in the release of classified or sensitive information. Furthermore, the more knowledgeable know that courts do review Agency classification decisions and that the potential exists for the Agency to be overruled.

In addition to the impact on our intelligence collection activity because of concern on the part of our sources, our liaison relationships with foreign intelligence services have suffered. Deputy Director John McMahon recently told a Congressional committee that our overseas representatives continue to report consternation on the part of these services over what is seen as a potential legal requirement to disclose information entrusted to us.

Furthermore, the administrative burden to the Agency over the past years has been considerable. Since 1975 we estimate that the Agency has expended over \$25 million in just personnel costs for processing all requests for information--\$13.7 million for FOIA. The benefit to the public resulting from this expenditure has been, overall, marginal at best. To be sure, some of the information released has benefited selected segments of the public. For instance, scholars and some members of the news media have found useful the release of some finished intelligence studies and OSS records. Most records held by CIA, however, remain classified under the criteria of Executive Order 12356 or predecessor Orders and/or involve intelligence sources and methods. As such, this information is exempted from access under the Freedom of Information Act.

When feasible, segregable portions of otherwise exempt records are released, but the public benefit arising from the disclosure of fragmentary and often incomplete raw intelligence is dubious, and the result is sometimes even misleading. The provisions of the Act which permit the Agency to charge fees for record searches and for duplication are grossly inadequate for recovering even minimal costs. For all years, the Agency has collected a total of \$85,024 in fees. When compared with expenditures for administering just the FOIA, this amounts to slightly over one-half cent collected for every dollar spent. Because of the number of fee waivers or fee reductions granted, even under the January 1983 guidelines, the Agency was able to collect only \$8,817.10 in fees and advance deposits during CY 1983. This represents a decrease of 21 percent compared with CY 1982 collections. Nevertheless, with review time constituting our greatest cost, FOIA processing can never become anywhere near self-supporting.

As explained in earlier reports, the Agency also faces some real problems in seeking to meet the time deadlines stipulated in the Act, and we believe these complicating factors are worth repeating. Because of the decentralized character of our systems of records, a number of files and indices must usually be searched to process a typical request. For example, a reasonably simple request may require as many as 21 records systems to be searched, a complex request over 100 systems. Whenever relevant records are located, these must be reviewed with painstaking care by knowledgeable officers of the CIA to ensure no information is released which might damage national security, harm U.S. foreign relations, or reveal the identities of intelligence sources or methods. This critical analysis requires the expenditure of an inordinate amount of manpower. Moreover, it cannot be entrusted to FOIA officers hired just for the purpose of review, as is done in other agencies. Rather, this analysis and review requires the exercise of careful judgment by professional intelligence officers who have primary responsibility for vital programs of intelligence collection and analysis for the President and other policy-makers. Experienced operations officers and analysts cannot be easily or readily acquired on the open market. It takes years of experience and training to develop a top-quality intelligence officer. Resources the Agency allocates to the administration of the FOIA are in competition with priority intelligence requirements. Intelligence officers must necessarily be diverted from their primary duties to review material responsive to FOIA requests. If the volume of requests were to decline sufficiently to enable us to reduce our backlog, we could probably improve our response time considerably. Given the configuration of Agency records systems, the number of systems that must be searched, and the

level at which records must be carefully reviewed for release, however, it is doubtful that the Agency will ever be in a position to respond to FOIA requests within the time limits set by the Act. We continue to look for ways to make our processing more efficient, and in an effort to be fair to all, we have continued to follow the policy of handling requests on a first-received, first-processed basis. Unless a request essentially duplicates a previous request, long delays are inevitable under this policy. Some requesters, understandably impatient over the lack of response, file administrative appeals or go into early litigation, thereby further burdening the Agency as other resources are tasked to meet the priority demands of litigation.

In summary, the negative perceptions on the part of potential sources, the diversion of expertise from our primary mission, the cost, the time constraints required by FOIA, and the impact on our liaison relationships are the major problems we face in complying with the FOIA. Nevertheless, we believe the Agency's performance is a conscientious one, and we continue to look for ways in which it can be improved without impairing national security.

Sincerely,

Harry E. Fitzwater
Deputy Director
for
Administration

Enclosures

Production/Workload Statistics

	<u>FOIA</u>	<u>PA</u>	<u>EO*</u>	<u>TOTALS</u>	<u>%</u>
Workload:					
Cases carried over from 1982	1360	1096	283	2739	(53.0)
Cases logged during 1983	<u>1266</u>	<u>971</u>	<u>229</u>	<u>2466</u>	(47.0)
Totals	2626	2067	512	5205	
Actions taken:					
Granted in full	128	156	56	340	(16.5)
Granted in part	214	256	91	561	(27.2)
Denied in full	138	108	46	292	(14.1)
No records found	85	388	0	473	(23.0)
No CIA records found	6	6	0	12	(0.6)
Cancelled	285	24	0	309	(15.0)
Withdrawn	21	6	0	27	(1.3)
Referred elsewhere	22	2	2	26	(1.3)
Early appeal	12	1	0	13	(0.7)
Early litigation	<u>4</u>	<u>2</u>	<u>0</u>	<u>6</u>	(0.3)
Totals:	915	949	195	2059	(100.0)
Cases carried over to 1984	1711	1118	317	3146	
Change in workload	+351	+22	+34	+407	(+15)

*These are requests processed under the mandatory classification review provision of Executive Order 12356. Most of them are either referrals from the Presidential Libraries or declassification requests from other Federal agencies.

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1. Total number of initial determinations not to comply with a request for records made under subsection 552(a): 352

2. Authority relied upon for each such determination:

(a) Exemptions in 552(b):

<u>Exemption involved</u>	<u>Number of times (i.e., requests) invoked</u>
(b)(1)	217
(b)(2)	0
(b)(3)	243
(b)(4)	4
(b)(5)	6
(b)(6)	20
(b)(7)	2
(b)(8)	0
(b)(9)	0

(b) Statutes invoked pursuant to Exemption No. 3:

<u>Statutory citation</u>	<u>Number of times (i.e., requests) invoked</u>
50 U.S.C. 403 (d)(3) and/or 50 U.S.C. 403g	243

(c) Other authority: None

There were 435 other FOIA cases in which the requesters were neither given access to nor denied the records sought. None of these cases was regarded as a denial, however, inasmuch as the Agency was either prepared to act upon the request or there proved to be no records to act upon. Accordingly, they have not been included in the 352 figure provided in answer to question No. 1, above. In 85 instances, our searches uncovered no records relevant to the request. In six other cases, we found no CIA-originated records, but did locate in our files pertinent documents created by another agency, which were subsequently referred to the agency of origin for review and direct response to the requesters. There were 22 instances where the information requested did not fall under CIA's jurisdiction, and the requests were thus referred to the agency or agencies having cognizance over the records. In 12 cases, requesters appealed on the basis of our failure to respond within the statutory deadline; in another four cases, the requesters went into litigation for the same reason. In each of these instances, therefore, the initial processing of the requests progressed into the Agency's appellate

or litigation channels. Twenty-one requests were withdrawn by the requesters after processing had commenced, but before action on them could be completed. Finally, 285 cases were canceled by the Agency because of the failure of requesters to respond to letters asking for clarification, additional identifying information, notarized releases from third parties, fee payments, fee deposits, or written commitments that all reasonable search and/or copying fees would be paid, etc. In each of the latter cases, at least 90 days had elapsed without a reply from the requester before action was taken to discontinue processing.

3. Total number of administrative appeals from adverse initial decisions made pursuant to subsection (b)(6): 15

In seven additional cases, requests which were initially processed under the provisions of the Privacy Act were processed under the Freedom of Information Act upon appeal, in accord with the wishes of the appellants. These were requests for access to personal records, which the CIA usually processes under the Privacy Act rather than the Freedom of Information Act. Also, based upon the failure of the Agency to reply to Freedom of Information requests within ten working days, 12 appeals were received.

(a) Number of appeals in which, upon review, request for information was granted in full: None

(b) Number of appeals in which, upon review, request for information was denied in full: 27

(c) Number of appeals in which, upon review, request was denied in part: 17

4. Authority relied upon for each such appeal determination:

(a) Exemptions in 552(b):

<u>Exemption invoked</u>	<u>Number of times (i.e., appeals) invoked</u>
(b)(1)	43
(b)(2)	0
(b)(3)	42
(b)(4)	0
(b)(5)	4
(b)(6)	4
(b)(7)	1
(b)(8)	0
(b)(9)	0

(b) Statutes invoked pursuant to Exemption No. 3:

<u>Statutory citation</u>	<u>Number of times (i.e., appeals) invoked</u>
50 U.S.C. 403(d)(3) and/or 50 U.S.C. 403g	42

5. Names and titles of those persons who, on appeal, were responsible for the denial in whole or in part of records requested and the number of instances of participation of each:

<u>Name</u>	<u>Title</u>	<u>No. of instances of participation</u>
Taylor, James H.	Inspector General	1
Fitzwater, Harry E.	Deputy Director for Administration	24
Gates, Robert M.	Deputy Director for Intelligence	14
Stein, John H.	Deputy Director for Operations	67

6. Provide a copy of each court opinion or order giving rise to a proceeding under subsection (a)(4)(F): etc.: None

7. Provide an up-to-date copy of all rules or regulations issued pursuant to or in implementation of the Freedom of Information Act (5 U.S.C. 552):

See Tab B.

8. Provide separately a copy of the fee schedule adopted and the total dollar amount of fees collected for making records available:

See Tab C for a copy of the fee schedule.

The total amount collected and transmitted for deposit in the U.S. Treasury during 1983 was \$8,817.10.

9. A. Availability of records:

As the CIA does not promulgate materials as described in 5 U.S.C. 552(a)(2)(A)-(C), no new categories have been published.

In the case of each request made pursuant to the Freedom of Information Act, all reasonably segregable portions of records are released.

B. Costs

STAT A total [] actual man-hours of labor was devoted during calendar year 1983 to the processing of Freedom of Information Act, Privacy Act, and mandatory classification review requests, appeals, and litigation. Taking into account leave and holidays, this would equate to approximately [] full-time STAT personnel. We estimate the average grade for professional employees involved in these programs at GS-12/5, and for clerical employees GS-06/4. The funds expended during calendar year 1983 on personnel salaries, if overtime payments are ignored, would thus amount to slightly over \$3.4 million. If fringe benefits such as retirement and hospitalization are factored in as amounting to 10 percent of the salaries, the total personnel costs come to just over \$3.75 million. Of this total, approximately \$2.8 million can be attributed to the Freedom of Information Act.

C. Compliance with time limitations for Agency determinations:

(I) Provide the total number of instances in which it was necessary to seek a 10-day extension of time: None

The Agency's processing backlogs have been such that in almost all instances the deadlines for responding to requests and appeals expired prior to our actually working on them. We were seldom in a position, for that reason, to assert that any of the three conditions upon which an extension must be based existed. We have, accordingly, explained the problem to requesters and appellants and apprised them of their rights under the law.

(II) Provide the total number of instances where court appeals were taken on the basis of exhaustion of administrative procedures because the Agency was unable to comply with the request within the applicable time limits: 10

Of these, six actions were brought under the FOIA and four were brought under both the FOIA and PA.

(III) Provide the total number of instances in which a court allowed additional time upon a showing of exceptional circumstances, together with a copy of each court opinion or order containing such an extension of time : 6

Copies of the pertinent court orders are attached at Tab D. No written orders were issued by the court in American Broadcasting Co., Inc., v. CIA (CA 83-1836) Bevis v. Department of State (CA 83-0993), Center for National Security Studies v. CIA (CA 83-1869), and Rosa v. Burkhalter (CA 83-6254). Additional time was granted pursuant to an oral agreement at status call.

D. Internal Memoranda:

See Tab E.

STAT IPD/[] 15 February 1984
Distribution:
Orig - Adse
1 - DDA Subject w/report
1 - DDA Chrono w/o
1 - DDA/IRO w/report
1 - ER w/report
1 - D/OIS Subject w/report
1 - D/OIS Chrono w/o
1 - OGC w/report
1 - OLL w/report & tabs
1 - DDS&T/IRO w/report
1 - DDO/IRO w/report
1 - DDI/IRO w/report
1 - DDO/IMS/[] w/report
1 - O/DCI/FOI w/report
1 - IPD Chrono w/o
1 - 2 IPD Subj. w/encls.
1 - IPD Corres (Annual) w/report & tabs

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